

Approved June 1, 1989.

Effective June 1, 1989.

CHAPTER 230**S.B. No. 489****AN ACT**

relating to the continuation, powers, and duties of the Department of Agriculture; providing penalties; making an appropriation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. **SUNSET PROVISION.** The Department of Agriculture is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the department is abolished September 1, 2001 [1989].

SECTION 2. Section 11.005, Agriculture Code, is amended to read as follows:

Sec. 11.005. **QUALIFICATIONS.** (a) *To be eligible for election as commissioner or appointment to fill a vacancy in the office of commissioner, a person must:*

(1) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(2) have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture; or

(3) have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 29, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service.

(b) For purposes of this section, a person is engaged in the business of agriculture if the person is engaged, for the purpose of wholesale or retail sale, in:

(1) the production of crops for human or animal consumption, or planting seed;

(2) floriculture, viticulture, horticulture, or aquaculture;

(3) the raising or keeping of livestock; or

(4) the processing of any of the products listed in Subdivisions (1) through (3) of this subsection. [The commissioner must be an experienced and practical farmer and have knowledge of agriculture, manufacturing, and general industry.]

SECTION 3. Section 12.013, Agriculture Code, is amended to read as follows:

Sec. 12.013. **EMPLOYEES.** (a) The department may employ personnel as the duties of the department require. The commissioner shall provide to the department's employees, as often as necessary, information regarding their qualifications for employment and their responsibilities under applicable laws relating to standards of conduct for state employees.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The commissioner or the commissioner's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(d) *The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:*

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(e) *A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.*

(f) *The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.*

SECTION 4. Chapter 12, Agriculture Code, is amended by adding Section 12.0135 to read as follows:

Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(b) An officer, employee, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 5. Subsection (a), Section 12.014, Agriculture Code, is amended to read as follows:

(a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act [On or before November 1 of each year, the department shall submit to the governor a full report on the work and expenditures of the department during the preceding fiscal year. The governor shall transmit the report to the legislature].

SECTION 6. Chapter 12, Agriculture Code, is amended by adding Section 12.0145 to read as follows:

Sec. 12.0145. SUBMISSION OF PROPOSED FEE SCHEDULE. The department shall include, as part of each request for legislative appropriations submitted to the

Legislative Budget Board, a proposed fee schedule that would recover all direct costs of administering each regulatory program of the department except a regulatory program exempted by the department because increased cost recovery would be contrary to the program's purpose.

SECTION 7. Subsection (c), Section 12.017, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person violates a rule adopted by the department under this section. An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$200].~~

SECTION 8. Chapter 12, Agriculture Code, is amended by adding Section 12.0175 to read as follows:

Sec. 12.0175. GROWN IN TEXAS; NATURAL, LEAN, OR ORGANIC CERTIFICATION. (a) If the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may charge a membership fee not to exceed \$50, as provided by department rule, for each producer that participates in the program. The fee shall be designed to recover the costs of promotion.

(b) If the department establishes an organic certification program, the department may charge a fee not to exceed \$150, as provided by department rule, for each participant certified by the department. The fee shall be designed to recover the costs of inspection for purposes of certification.

SECTION 9. Section 12.018, Agriculture Code, is amended to read as follows:

Sec. 12.018. ~~[AFLATOXIN]~~ TESTING. (a) On request of any person, the department may test an agricultural product for aflatoxins.

~~[(b)]~~ The department may set and charge a fee of not less than \$20 nor more than \$40 for each test ~~[testing under this section].~~

(b) On request of any person, the department may perform laboratory analyses on agricultural products, including testing for pesticide residue, protein content, and milk butterfat content.

(c) The department shall charge a fee of not less than \$5 nor more than \$150 for each laboratory analysis performed under Subsection (b) of this section. The department shall set by rule the fee for each type of laboratory analysis. Each fee shall be designed to recover at least half of the costs of performing the analysis.

SECTION 10. Section 12.020, Agriculture Code, is amended to read as follows:

Sec. 12.020. *ADMINISTRATIVE PENALTIES* ~~[DEFERRED LICENSE SUSPENSION]~~. (a) *If a person violates a provision of this code described by Subsection (c) of this section or a rule or order adopted by the department under a provision of this code described by Subsection (c) of this section, the department may assess an administrative penalty against the person as provided by this section* ~~[In this section, licensee means a person that holds a license under this code or operates under or seeks certification from the department].~~

(b) The penalty for each violation may be in an amount not to exceed the maximum provided by Subsection (c) of this section. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments ~~[If the department is authorized to suspend a license under this code, the commissioner or his agent may defer suspension if suspension is based on a violation of this code or a rule of the department and may impose a civil penalty in lieu of suspension. In determining the amount of the penalty, the department shall consider the economic impact that suspension would have on the licensee. Except for licenses issued under Chapters 75 and 76, the amount of a civil penalty imposed under this section may not be less than \$50 per day for each day that the license would be suspended. For licenses issued under Chapters 75 and 76, the amount of a civil penalty imposed under this section may not be less than \$25 per day nor more than \$50 per day for each day that the license would be suspended. If the licensee fails to pay the civil penalty before the 11th day after the day he is notified of the~~

~~civil penalty, the licensee loses the opportunity to pay the civil penalty in lieu of suspension and the department shall proceed with the suspension].~~

(c) *The provisions of this code subject to this section and the applicable penalty amounts are as follows:*

<i>Provision</i>	<i>Maximum Penalty</i>
<i>Chapters 13, 14, 61, 101, 102, 103, and 132</i>	<i>\$ 500</i>
<i>Subchapter B, Chapter 71</i>	<i>\$2,000</i>
<i>Subchapters A and C, Chapter 71</i>	
<i>Chapters 72, 73, and 74</i>	<i>\$5,000</i>

~~[If the department finds good cause, the department need not suspend a license for a violation of this code or a rule of the department. A finding of good cause includes a finding that:~~

- ~~[(1) the violation could not reasonably have been foreseen by the licensee;~~
- ~~[(2) the violation could not have been prevented by the exercise of due diligence by the licensee; or~~
- ~~[(3) the licensee was entrapped].~~

(d) In determining the amount of the penalty, the department shall consider:

- (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;*
- (2) the economic damage to property or the environment caused by the violation;*
- (3) the history of previous violations;*
- (4) the amount necessary to deter future violations;*
- (5) efforts to correct the violation; and*
- (6) any other matter that justice may require.*

(e) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (d) of this section.

(f) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the department made under Subsection (e) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(h) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(i) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warrant-

ed. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(j) The department shall give notice of the commissioner's order to the person charged. The notice shall include:

- (1) the findings of fact and conclusions of law separately stated;
- (2) the amount of the penalty ordered, if any;
- (3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and
- (4) other information required by law.

(k) Within the 30-day period immediately following the day on which the order becomes final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

- (1) pay the penalty in full; or
- (2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount to the department for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the department a supersedeas bond in a form approved by the department for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(l) If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (k)(2) of this section by filing with the department an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(m) Failure to forward the money to or to post the bond or file the affidavit with the department within the time provided by Subsection (k) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (k)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (k) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) If the penalty is reduced or not assessed by the court, the department shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the department under Subsection (k) of this section and ending on the date the penalty is remitted.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 11. Chapter 12, Agriculture Code, is amended by adding Section 12.022 to read as follows:

Sec. 12.022. AUTHORITY TO ACCEPT GIFTS. The department is authorized to accept gifts, grants, and donations and shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the department during the preceding fiscal year. This report shall be included in the annual report required by Section 12.014 of this chapter.

SECTION 12. Section 12.023, Agriculture Code, is amended to read as follows:

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES [FAILURE TO PAY FEES]. The department by rule may adopt a system under which the registration or licenses required by Section 14.004, 61.013, 71.043, 71.057, 75.004, 76.071, 76.105, or 132.021 of this code expire on various dates during the year. For the year in which the registration or license expiration date is changed, fees payable on renewal of the registration or license shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. [If the department is authorized by this code to require a person to pay an additional fee for the person's failure to pay in a timely manner any required license or certificate fee, the department may, after a hearing conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes);

~~[(1) suspend or cancel the person's license or certificate; or~~

~~[(2) refuse to renew the person's license or certificate until all fees that are due are paid.]~~

SECTION 13. Chapter 12, Agriculture Code, is amended by adding Section 12.024 to read as follows:

Sec. 12.024. LATE RENEWAL OF LICENSE OR REGISTRATION. (a) This section is applicable only to a renewal fee under Section 14.005, 71.043, 71.057, 75.004, 76.044, 76.073, 76.113, or 132.025 of this code.

(b) A late fee is assessed according to the following schedule:

<i>Days Late</i>	<i>Late Fee Amount</i>
<i>at least 1 but less than 31</i>	<i>20% of the renewal fee</i>
<i>at least 31 but less than 91</i>	<i>50% of the renewal fee</i>
<i>at least 91 but less than 365</i>	<i>100% of the renewal fee</i>

(c) A person who fails to pay the renewal fee and the applicable late fee within one year after the due date of the renewal fee is not eligible to renew a license. The ineligible person may reapply for an initial license or registration.

SECTION 14. Chapter 12, Agriculture Code, is amended by adding Section 12.025 to read as follows:

Sec. 12.025. PROGRAM ACCESSIBILITY PLAN. The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs.

SECTION 15. Chapter 12, Agriculture Code, is amended by adding Section 12.026 to read as follows:

Sec. 12.026. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification.

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or

(3) in a bill for service provided by an individual or entity regulated by the department.

(c) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(d) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 16. Chapter 12, Agriculture Code, is amended by adding Section 12.027 to read as follows:

Sec. 12.027. COMPETITIVE COST REVIEW PROGRAM. The department is subject to the requirements of Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 17. Chapter 12, Agriculture Code, is amended by adding Section 12.028 to read as follows:

Sec. 12.028. COMPETITIVE BIDDING OR ADVERTISING. (a) The department may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

(b) The department may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 18. Chapter 12, Agriculture Code, is amended by adding Section 12.029 to read as follows:

Sec. 12.029. MINORITY AND FEMALE-OWNED BUSINESS CONTRACTS. (a) The department shall establish by rule policies to encourage minority and female-owned small businesses to bid for contract and open market purchases of the department and to assist those businesses in that bidding. The department shall review the policies periodically to correct any deficiencies in the policies.

(b) The department annually shall determine the number, types, and value of contracts awarded to minority and female-owned small businesses in the year preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the department in that year.

(c) The department shall file the policies established under this section with the State Purchasing and General Services Commission and the Texas Department of Commerce. The commission shall conduct an analysis of the department's policies and the policies' effectiveness and shall report the analysis to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(d) In this section, "minority and female-owned small business" means a business enterprise:

(1) that is independently owned and operated, that was formed for the purpose of making a profit, and that has fewer than 100 employees and less than \$1 million in annual gross receipts; and

(2) that is controlled by one or more socially and economically disadvantaged persons who own at least 51 percent of the business enterprise and are socially disadvantaged because of their identification as members of certain groups, including women, black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans, and American Indians.

SECTION 19. Chapter 13, Agriculture Code, is amended by adding Section 13.007 to read as follows:

Sec. 13.007. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 20. Section 13.041, Agriculture Code, is amended to read as follows:

Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under Section 13.021, 13.027, 13.029, or each of Sections 13.030 through 13.039 of this code is a Class C misdemeanor [punishable by a fine of not less than \$10 nor more than \$200].

(b) [An offense under Section 13.029 of this code is a misdemeanor punishable by a fine of not less than \$25 nor more than \$100.]

[(c) An offense under Section 13.021 or each of Sections 13.030–13.038 of this code is a misdemeanor punishable by a fine of not less than \$20 nor more than \$100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than \$50 nor more than \$200.]

[(d)] It is a defense to prosecution under Sections 13.030–13.038 of this code that a discrepancy between the actual weight or volume at the time of sale to a consumer and the weight marked on the container or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SECTION 21. Section 13.101, Agriculture Code, is amended to read as follows:

Sec. 13.101. REQUIRED INSPECTION. (a) At least once every three years [each year], or more often as required by the department, a weight or measure shall be inspected and tested for correctness by a sealer if it:

(1) is kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the weight or measure, including the size, quantity, extent, or area, of any item; or

(2) is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) The department shall, to the extent necessary to ensure compliance with the official standards, require additional inspection and testing of weights and measures.

(c) ~~[(b)]~~ A person who uses or keeps for use, or has or offers for sale, a weight or measure is responsible for having the weight or measure inspected and tested *as required by this section* ~~[by a sealer]~~.

(d) ~~[(e)]~~ Unless the department requires an *additional* inspection ~~[more often than annually]~~, a weight or measure that is inspected and found correct by a sealer may be kept for use, used, kept or offered for sale, or sold ~~[for one year]~~ without further testing.

SECTION 22. Subsection (b), Section 13.102, Agriculture Code, is amended to read as follows:

(b) A weight or measure that has been tested, sealed, and certified correct by the National *Institute of Standards and Technology* ~~[Bureau of Standards]~~ may be kept or offered for sale or sold without being sealed under this subchapter.

SECTION 23. Section 13.112, Agriculture Code, is amended to read as follows:

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. ~~As [At least once each year, or more often as]~~ requested by the State Purchasing and General Services Commission or the governing body of a state institution, the department shall test each weight or measure used by a state institution for any purpose, including a weight or measure used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

SECTION 24. Subsections (a) and (b), Section 13.113, Agriculture Code, are amended to read as follows:

(a) The standards of weights and measures received from the United States and certified by the National *Institute of Standards and Technology* ~~[Bureau of Standards]~~ are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and sealed.

(b) The department shall maintain the official standards in a safe and suitable place in the offices of the department. The standards may not be moved except for repairs or certification. The department shall maintain the standards in good order and shall submit them to the National *Institute of Standards and Technology* ~~[Bureau of Standards]~~ for certification at least once each 10 years.

SECTION 25. Subsection (a), Section 13.114, Agriculture Code, is amended to read as follows:

(a) The department shall establish tolerances and specifications for commercial weighing and measuring apparatus used in this state. The tolerances and specifications shall be similar to those recommended by the National *Institute of Standards and Technology* ~~[Bureau of Standards]~~.

SECTION 26. Section 13.122, Agriculture Code, is amended to read as follows:

Sec. 13.122. PENALTIES. ~~[(a)]~~ An offense under Section 13.103, *13.106, 13.114, or each of Sections 13.116 through 13.121* of this code is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$100]~~.

~~[(b)] An offense under Section 13.116, 13.120, or 13.121 of this code is a misdemeanor punishable by a fine of not less than \$20 nor more than \$100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than \$50 nor more than \$200.~~

~~[(c)] An offense under Section 13.106, 13.114, 13.117, 13.118, or 13.119 is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.~~

SECTION 27. Section 13.207, Agriculture Code, is amended to read as follows:

Sec. 13.207. LICENSING OF TESTERS. (a) Without holding a license issued under this section, a person may not operate a testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing the milk or cream.

(b) A person is entitled to a license as a tester if the person is reliable, competent, and qualified to operate the apparatus in order to make an accurate test.

(c) Before issuing a license, the department may make necessary investigations of the qualifications of an applicant. The department may refuse to license an applicant that the department finds is not qualified under Subsection (b) of this section.

(d) The department shall collect a fee of \$10 for each license issued.

(e) A license issued under this section is valid for one year.

~~(f) [The department may revoke the license of a person who the department finds has failed to comply with a provision of this subchapter or a rule adopted under this subchapter. The department may suspend for six months the license of a tester who is finally convicted of a second offense under Section 13.212 of this code.]~~

[(g)] A licensee or a licensee's employer for valid reason may appoint a substitute tester for a period of 15 days. The reason for the appointment must be reported to the department. With approval of the department, the appointment may be extended for an additional period not to exceed 10 days.

(g) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(h) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(i) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 28. Section 13.211, Agriculture Code, is amended to read as follows:

Sec. 13.211. DUTIES OF DISTRICT OR COUNTY ATTORNEY. The county or district attorney of a county in which a violation of this subchapter occurs shall investigate and prosecute the violation. ~~[If necessary, the county or district attorney may sue to enjoin further violations of this subchapter.]~~

SECTION 29. Subsection (d), Section 13.212, Agriculture Code, is amended to read as follows:

(d) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine not to exceed \$1,000].~~

SECTION 30. Section 13.255, Agriculture Code, is amended to read as follows:

Sec. 13.255. CERTIFICATE. (a) A public weigher, whether elected or appointed, or deputy public weigher may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

~~(b) A state public weigher must submit a nonrefundable fee of \$200 with the application for a certificate of authority. A county public weigher or a deputy public weigher must submit a nonrefundable fee of \$50 with the application for a certificate of authority. [The department shall collect a fee of \$50 before issuing a certificate of authority to a county public weigher or to a deputy public weigher and shall collect a fee of \$200 before issuing a certificate of authority to a state public weigher.]~~

~~[(c) The department may suspend or revoke the certificate of authority of an appointed public weigher or of a deputy of an appointed county public weigher for cause after a hearing as a contested case under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). A public weigher or deputy public weigher whose certificate is suspended or revoked may not issue an official certificate of weight or measure.]~~

SECTION 31. Chapter 13, Agriculture Code, is amended by adding Section 13.2555 to read as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) *The department shall revoke, modify, or suspend the certificate of authority of an appointed public weigher or a deputy of an appointed county public weigher, assess an administrative penalty, place on probation the person whose certificate has been suspended, or reprimand an appointed public weigher or a deputy of an appointed county public weigher for a violation of this subchapter or a rule adopted by the department under this subchapter.*

(b) *If a certificate suspension is probated, the department may require the person to:*

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's certificate, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 32. Subsection (b), Section 14.005, Agriculture Code, is amended to read as follows:

(b) An applicant must file a separate application for each license, renewal, or amendment and shall accompany each application for a license or renewal with a *nonrefundable annual license fee of \$30 [license fee]*. The department shall prescribe the information to be contained in the application. *A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.*

SECTION 33. Section 14.015, Agriculture Code, is amended to read as follows:

Sec. 14.015. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION[~~REVOCATION, OR DENIAL~~] OF LICENSE. (a) *The department may deny an application for a license if the applicant fails to comply [suspend, revoke, or deny a license if, after an opportunity for a hearing, the department determines that the warehouseman has violated or failed to comply] with a requirement of this subchapter or a rule adopted by the department under this subchapter.*

(b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(c) If the department considers it necessary, the department may suspend a license without hearing for a period not to exceed 30 days.

(d) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(e) Except as provided by Subsection (c) of this section, if the department proposes to deny, revoke, modify, or suspend a person's application or license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 34. Subsection (b), Section 16.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$10 nor more than \$500].~~

SECTION 35. Subsection (a), Section 41.059, Agriculture Code, is amended to read as follows:

(a) The board shall file with the commissioner a proposed budget and may expend funds only after the commissioner has approved the budget. *If after thorough review the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the submitting board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.*

SECTION 36. Subsection (b), Section 41.103, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$50 nor more than \$200;~~

~~[(2) confinement in the county jail for not less than 10 days nor more than 6 months;~~
~~or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 37. Subsection (b), Section 53.024, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$1,000;~~

~~[(2) confinement in jail for not less than one year; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 38. Chapter 61, Agriculture Code, is amended by adding Section 61.0135 to read as follows:

Sec. 61.0135. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE.

(a) *The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.*

(b) *If a license suspension is probated, the department may require the person to:*

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) *If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-19a, Vernon's Texas Civil Statutes).*

SECTION 39. Subsection (c), Section 61.018, Agriculture Code, is amended to read as follows:

(c) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine not exceeding \$50, unless the accused has been previously convicted of a similar offense, in which case the fine may not exceed \$200].~~

SECTION 40. Section 62.005, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) *An application for licensing as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a nonrefundable license fee not to exceed \$100, as provided by department rule.*

SECTION 41. Chapter 62, Agriculture Code, is amended by adding Section 62.0065 to read as follows:

Sec. 62.0065. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing or registration examination is administered under this chapter, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 42. Section 62.010, Agriculture Code, is amended to read as follows:

Sec. 62.010. REVOCATION, MODIFICATION, OR SUSPENSION OF REGISTRATION OR[,] LICENSE[OR CERTIFICATION]. (a) The department shall revoke, modify, or suspend the registration or license of [If an inspector reports to the department that] a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants, place on probation a person whose registration or license has been suspended, or reprimand a registrant or licensee if the person makes [has made] exaggerated claims for products, fails [or has failed] to observe any rule governing the maintenance and production of a certified class of seed or plants that he or she is registered or licensed to produce or maintain, or violates another requirement of this chapter or a rule adopted by the board or the department under this chapter [the department may give written notice to the breeder or producer of the time and place of a revocation hearing to be held by the department not later than the 10th day following the day on which notice is issued].

(b) If a suspension of a license or registration is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If [at the hearing,] the department revokes a [finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any rule for the production and maintenance of the certified class of seed or plants involved, the department may revoke the] registration or license, the department shall [and] order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(d) If the department proposes to revoke, modify, or suspend a person's registration or license, the person is entitled to a hearing before a hearings officer designated by the department. The board shall prescribe procedures by which all decisions of the department to revoke, modify, or suspend a registration or license issued under this chapter are appealable to the board [(a) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been canceled and withdrawn may appeal the action to the board by filing a notice of appeal with the department within 30 days of the revocation. The department shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more

~~than 30 days after the day on which notice of appeal is filed with the department. If the department's action is reversed at the appeal hearing, the board shall direct the department to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously canceled and withdrawn].~~

SECTION 43. Section 62.011, Agriculture Code, is amended to read as follows:

Sec. 62.011. PENALTIES. (a) A person commits an offense if the person:

(1) sells or offers for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as Foundation, Registered, or Certified seed or plants;

(2) represents himself or herself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he or she has been registered or licensed under this chapter;

(3) sells or offers for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with this chapter or with the rules adopted under this chapter;

(4) sells or offers for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented;

(5) violates Section 62.007(c) of this code; or

(6) violates Section 62.009(c), (d), or (e) of this code.

(b) An offense under Subsection (a)(1), (a)(2), (a)(5), or (a)(6) of this section is a *Class C* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$10 nor more than \$100;~~

~~[(2) confinement in county jail for not more than 30 days; or~~

~~[(3) both fine and confinement under this subsection].~~

(c) An offense under Subsection (a)(3) or (a)(4) of this section is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$200 nor more than \$500;~~

~~[(2) confinement in county jail for not more than 60 days; or~~

~~[(3) both fine and confinement under this subsection.~~

~~[(d) An offense under Subsection (a)(5) of this section is a misdemeanor punishable by a fine of not more than \$1,000].~~

SECTION 44. Section 71.012, Agriculture Code, is amended to read as follows:

Sec. 71.012. CIVIL PENALTY; *INJUNCTION*. (a) ~~A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment [private or common carrier, including a railway, steamship, motorboat, bus, or truck, that transports or delivers any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of an order or rule of the department under this subchapter is liable to the state for a penalty in the amount of \$500].~~

~~(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty [The attorney general shall institute suit for the recovery of a penalty under this section].~~

~~(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments~~

with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit [Venue for a suit under this section is in Travis County].

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 45. Subsection (b), Section 71.013, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor [~~punishable by a fine not to exceed \$100~~].

SECTION 46. Section 71.041, Agriculture Code, is amended to read as follows:

Sec. 71.041. DEFINITIONS. In this subchapter:

(1) "Florist" means a person who maintains, grows, raises, or buys and offers for sale or lease for profit florist items.

(2) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(3) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products that the person *either sells or leases*, regardless of the variety sold, leased, or grown.

SECTION 47. Section 71.042, Agriculture Code, is amended to read as follows:

Sec. 71.042. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may adopt rules as necessary for the immunity and protection of plants from diseases and insect pests, including rules that:

(1) regulate the traffic, growing, shipping, [~~and~~] selling, *and leasing* of nursery products;

(2) provide for the inspection and control of florist items; and

(3) relate to city, private, or public parks, or shade trees, shrubbery, and ornamentals along city streets or property or on city residences.

SECTION 48. Section 71.043, Agriculture Code, is amended to read as follows:

Sec. 71.043. ANNUAL REGISTRATION [~~CHIEF INSPECTOR~~]. (a) *A florist or nursery owner must register with the department under this section each nursery, greenhouse, orchard, garden, or other place growing for sale or lease, offering for sale or lease, or otherwise distributing a florist item or nursery product.*

(b) A florist or nursery owner may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a florist or nursery owner grows for sale or lease or offers for sale or lease a florist item or nursery product.

(c) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(d) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

(e) A person may not offer for sale or lease a nursery product or florist item without a registration certificate issued under this section. [The commissioner shall

~~appoint one person as chief inspector to inspect or supervise the inspection of nursery products, florist items, and premises in accordance with this subchapter.]~~

SECTION 49. Section 71.044, Agriculture Code, is amended to read as follows:

Sec. 71.044. ~~[ANNUAL]~~ INSPECTION. (a) At least once *every three years* ~~[each year]~~ the department shall inspect each nursery, greenhouse, orchard, garden, florist, or other place growing for sale *or lease* or offering for sale *or lease* a nursery product, florist item, or other item of plant life in order to determine if the product, item, or premises are infected with a disease or insect pest injurious to human, animal, or plant life.

(b) *The department shall perform additional inspections to the extent necessary to ensure compliance with this subchapter and quarantine agreements with the federal government and other state governments.*

(c) *A department inspector may examine invoices or other documents relating to the shipping and receiving of nursery/floral products for the purpose of determining the origin, transit, and chain of custody of nursery/floral items found to be:*

(1) infested with pests or infected with plant disease; or

(2) shipped in violation of state or federal quarantine laws, regulations, or agreements.

SECTION 50. Section 71.055, Agriculture Code, is amended to read as follows:

Sec. 71.055. REVOCATION OF CERTIFICATE. The department may revoke a certificate ~~[of inspection]~~ issued under this subchapter if it finds that the person to whom the certificate was issued:

(1) made a false representation; or

(2) violated or refused to comply with this subchapter or a rule or instruction of the department under this subchapter.

SECTION 51. Subsection (a), Section 71.050, Agriculture Code, is amended to read as follows:

(a) Each nursery product or florist item offered for sale *or lease*, consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of the certificate of inspection issued by the department.

SECTION 52. Subsection (c), Section 71.052, Agriculture Code, is amended to read as follows:

(c) The department may adopt suitable rules governing the sale *or lease* and shipment of camellias and other products as necessary for the control of camellia flower blight.

SECTION 53. Section 71.053, Agriculture Code, is amended to read as follows:

Sec. 71.053. INSPECTION OF SHIPMENTS. (a) The department shall inspect shipments of nursery products or florist items in this state to determine if the shipments are accompanied by the tags and certificates required by this subchapter *and are free of pests or plant diseases.*

(b) *If the department finds that a shipment of a nursery product or florist item is diseased or pest-infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare as provided in Section 71.046 of this subchapter.*

(c) ~~[(b)]~~ If the department finds that a shipment of a nursery product or florist item is not accompanied by a required tag or certificate, the department shall treat the shipment as infected and may destroy or dispose of the shipment *as provided in Section 71.046 of this subchapter.* ~~[Money received from any sale of the shipment shall be deposited as other money collected by the department.]~~

SECTION 54. Section 71.056, Agriculture Code, is amended to read as follows:

Sec. 71.056. INSPECTION FEE ~~[FEES]~~. (a) The department shall fix by rule and collect a ~~[inspection fees in accordance with this section.~~

~~[(b) The fee for each inspection of an installation, an area, or premises, growing, selling, displaying, or handling nursery products shall be not less than \$15 nor more than \$75.~~

~~[(e) The fee for each inspection of an installation, an area, or premises, where florist items are bought and sold or offered for sale shall be not less than \$15 nor more than \$75.~~

~~[(d) The department shall fix the] fee for inspection of nursery products or florist items for the issuance of an importation certificate.~~

~~(b) [(e)]~~ The department shall account for fees collected under this section in the manner and method prescribed by the state auditor.

SECTION 55. Section 71.057, Agriculture Code, is amended to read as follows:

Sec. 71.057. NURSERY DEALERS AND AGENTS; *ANNUAL REGISTRATION*. (a) A person who buys and sells *or leases* or offers for sale *or lease* a nursery product and who has facilities that maintain or preserve the nursery product and prevent that product from becoming dry, infested, or diseased is a nursery dealer ~~[and shall register a permanent address with the department. Each copy of a certificate of inspection issued to a nursery dealer shall show the address registered with the department].~~

(b) A person is a nursery agent if the person sells *or leases*, offers for sale *or lease*, or takes mail orders for the sale *or lease* of a nursery product and:

(1) is entirely under the control of a nursery grower or nursery dealer with whom the nursery product offered for sale *or lease* originates; or

(2) operates on a cooperative basis for handling a nursery product with a nursery grower or nursery dealer.

(c) A nursery agent shall possess proper credentials from the nursery grower or nursery dealer the agent represents or cooperates with. A nursery agent who fails to possess proper credentials is subject to this subchapter as a nursery dealer.

~~(d) A nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product.~~

~~(e) A nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a nursery dealer or nursery agent offers a nursery product for sale or lease.~~

~~(f) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.~~

~~(g) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.~~

SECTION 56. Section 71.058, Agriculture Code, is amended to read as follows:

Sec. 71.058. PENALTIES. (a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter ~~[other than Section 71.052 of this code];~~ or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

~~(b) [A person commits an offense if the person imports a camellia plant or flower in violation of Section 71.052 of this code.~~

~~[(e)] An offense under Subsection (a) of this section is a Class C misdemeanor [punishable by a fine of not less than \$25 nor more than \$200].~~

(c) Each day that a person maintains premises in a condition not in compliance with this subchapter after receiving notice by registered or certified mail under Section 71.046 of this code is a separate offense.

~~(d) [An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than \$100.~~

~~[(e)]~~ A person commits a separate offense for each camellia plant or flower imported.

SECTION 57. Chapter 71, Agriculture Code, is amended by adding Section 71.059 to read as follows:

Sec. 71.059. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$50 nor more than \$1,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 58. Chapter 71, Agriculture Code, is amended by adding Section 71.060 to read as follows:

Sec. 71.060. STOP-SALE ORDER. (a) If the department has reason to believe that a florist item or nursery product is in violation of this subchapter or a rule adopted under this subchapter, the department may issue and enforce a written order to stop the sale of the florist item or nursery product. The department shall present the order to the owner or the person in control of the florist item or nursery product. The person who receives the order may not sell the florist item or nursery product until discharged by a court under Subsection (b) of this section or until the department determines that the florist item or nursery product is in compliance with this subchapter and the rules adopted under this subchapter.

(b) The owner or the person in control of any florist item or nursery product prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the florist item or nursery product is found for a judgment as to the justification of the order and for the discharge of the florist item or nursery product from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this subchapter.

SECTION 59. Subsection (b), Section 71.116, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$100].~~

SECTION 60. Chapter 71, Agriculture Code, is amended by adding Section 71.117 to read as follows:

Sec. 71.117. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 61. Subsection (g), Section 72.042, Agriculture Code, is amended to read as follows:

(g) If the court finds the premises to be a public nuisance, the department may enter the premises and place them in compliance with the order. The owner shall pay to the department an amount not to exceed twice the minimum wage established under state law [25 cents] a person, as allowed by the court, for each hour actually expended placing the premises in compliance with the order. In addition, the owner shall pay to the department the sum of \$250 [\$25], not as a penalty but as reasonable compensation for the time involved in the execution of the order.

SECTION 62. Chapter 72, Agriculture Code, is amended by adding Section 72.046 to read as follows:

Sec. 72.046. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 63. Section 72.061, Agriculture Code, is amended to read as follows:

Sec. 72.061. GENERAL PENALTY. (a) A person who violates any provision of this chapter for which a separate penalty is not provided commits an offense.

(b) An offense under this section is a Class C misdemeanor [punishable by a fine not to exceed \$200].

SECTION 64. Subsection (b), Section 72.062, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [punishable by a fine not to exceed \$200].

SECTION 65. Subsection (b), Section 72.063, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine not to exceed \$200]~~.

SECTION 66. Subsection (b), Section 72.064, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine not to exceed \$200]~~.

SECTION 67. Section 73.002, Agriculture Code, is amended to read as follows:

Sec. 73.002. **POLICY.** The state recognizes that the citrus industry is a valuable asset and that ~~[the]~~ citrus fruit and trees are ~~[crop is]~~ highly susceptible to the ravages of insects, pests, and plant diseases. The state shall use all constitutional measures to protect this industry from destruction by pests and diseases.

SECTION 68. Section 73.005, Agriculture Code, is amended to read as follows:

Sec. 73.005. **MOVEMENT OF INFECTED NURSERY PRODUCTS AND OTHER HOSTS INTO CITRUS ZONE.** A person may not ship into the citrus zone a nursery product, seed, citrus fruit, or other host infected with a pest or disease listed in Section 73.004(b) of this code.

SECTION 69. Subsections (b) and (c), Section 73.009, Agriculture Code, are amended to read as follows:

(b) An offense under Section 73.005 of this code is a *Class A* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$100 nor more than \$1,000;~~

~~[(2) confinement in county jail for not less than 10 days nor more than one year; or~~

~~[(3) both fine and confinement under this subsection].~~

(c) An offense under Section 73.006 of this code is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$50 nor more than \$200]~~.

SECTION 70. Chapter 73, Agriculture Code, is amended by adding Section 73.010 to read as follows:

Sec. 73.010. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 71. Subsection (i), Section 74.004, Agriculture Code, is amended to read as follows:

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.

SECTION 72. Subsection (b), Section 74.007, Agriculture Code, is amended to read as follows:

- (b) An offense under this section is a *Class B* misdemeanor [~~punishable by:~~
~~(1) a fine of not less than \$50 nor more than \$500;~~
~~(2) confinement in jail for not less than 10 nor more than 30 days; or~~
~~(3) both fine and confinement under this subsection].~~

SECTION 73. Chapter 74, Agriculture Code, is amended by adding Section 74.008 to read as follows:

Sec. 74.008. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 74. Subsection (b), Section 74.061, Agriculture Code, is amended to read as follows:

- (b) An offense under this section is a *Class B* misdemeanor [~~punishable by:~~
~~(1) a fine of not less than \$50 nor more than \$500;~~
~~(2) confinement in jail for not less than 10 nor more than 30 days; or~~
~~(3) both fine and confinement under this subsection].~~

SECTION 75. Chapter 74, Agriculture Code, is amended by adding Section 74.062 to read as follows:

Sec. 74.062. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 76. Section 75.004, Agriculture Code, is amended by adding Subsection (f) to read as follows:

(f) A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 77. Chapter 75, Agriculture Code, is amended by adding Section 75.0055 to read as follows:

Sec. 75.0055. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE.

(a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, suspend an administrative penalty for good cause, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of Section 75.005 of this code or a rule adopted by the department under that section.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 78. Section 75.024, Agriculture Code, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) An offense under this section is a Class A misdemeanor [punishable by:

(1) a fine of not less than \$100 nor more than \$2,000;

(2) confinement in jail for not more than 90 days; or

(3) both fine and confinement under this subsection].

(c) Section 76.1555 of this code, which provides for the assessment of administrative penalties, applies to a person who violates this chapter or a rule or order adopted by the department under this chapter.

(d) A [The] penalty provided by this section does not affect the civil liability of a person convicted under this section.

SECTION 79. Section 76.007, Agriculture Code, is amended to read as follows:

Sec. 76.007. INTERAGENCY COOPERATION [COOPERATIVE AGREEMENTS; GRANTS IN AID]. (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any federal agency responsible for implementation of federal pesticide law, the department shall:

(1) register pesticides for use in Texas;

(2) adopt lists of state-limited-use pesticides;

(3) provide for training, certification, and licensure of all classes of pesticide applicators;

(4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and

(5) adopt rules to carry out the provisions of this chapter.

(b) The Texas Water Commission shall have principal authority to regulate and control water pollution.

(c) The department shall seek advice from the Texas Water Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agri-

cultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.

(d) The department shall give written notice to the Texas Water Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Water Commission may proceed with an investigation of possible violation of the Water Code.

(1) If the Texas Water Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.

(2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.

(3) The foregoing remedies shall not be mutually exclusive.

(e) The Texas Water Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.

(1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.

(2) If the Texas Water Commission determines that a violation of the Water Code has occurred, the Texas Water Commission shall seek the remedies provided by the Water Code.

(3) The foregoing remedies shall not be mutually exclusive.

(f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.

(g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

SECTION 80. Section 76.003, Agriculture Code, is amended to read as follows:

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.

(b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. *However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Water Commission based on the impact of the pesticide's use on water quality.*

(c) *The department shall formally request an opinion regarding impact on water quality from the Texas Water Commission during department consideration of any amendments to the current list of state-limited-use pesticides.*

(d) *At the direction of the Texas Water Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall add any pesticide to the state-limited-use list, and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.*

(e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:

- (1) with permission of the department;
- (2) under direct supervision of the department in certain areas under certain conditions; or
- (3) in specified quantities and concentrations.

(f) [(d)] The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

SECTION 81. Section 76.004, Agriculture Code, is amended to read as follows:

Sec. 76.004. DEPARTMENT RULES. (a) After notice, *the department shall conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter. Thereafter, [and hearing,] the department may adopt rules for carrying out the provisions of this chapter, including rules providing for:*

- (1) the collection, examination, and reporting of records, devices, and samples of pesticides;
- (2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers; ~~and~~
- (3) labeling requirements for pesticides and devices required to be registered under this chapter; *and*
- (4) *compliance with federal pesticide rules and regulations.*

(b) *Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with rules developed for the protection or enhancement of water quality by the Texas Water Commission pursuant to recommendations of the Groundwater Protection Committee.*

SECTION 82. Subchapter A, Chapter 76, Agriculture Code, is amended by adding Section 76.009 to read as follows:

Sec. 76.009. AGRICULTURE RESOURCES PROTECTION AUTHORITY. (a) *The Agriculture Resources Protection Authority is an agency of state government. The authority is composed of the following nine members:*

- (1) *the director of the Texas Agricultural Experiment Station;*
- (2) *the dean of the College of Agricultural Sciences of Texas Tech University;*
- (3) *the dean of The University of Texas School of Public Health at Houston;*
- (4) *the director of the environmental epidemiology program of the Texas Department of Health;*
- (5) *the chief of the groundwater conservation section of the Texas Water Commission;*
- (6) *the director of the Institute for International Agribusiness Studies of Prairie View A&M University;*
- (7) *one person appointed by the governor to represent the interests of consumers;*
- (8) *a producer of agricultural products appointed by the governor; and*
- (9) *the commissioner of agriculture.*

(b) *A person appointed by the governor, with the advice and consent of the senate, under Subdivision (7) or (8) of Subsection (a) of this section serves a two-year term ending on February 1 of each odd-numbered year. A vacancy in one of those positions shall be filled by appointment by the governor for the unexpired term.*

(c) *The commissioner of agriculture is the presiding officer of the authority.*

(d) *The authority shall meet quarterly and at the call of the presiding officer or a majority of the members. To take an action, the authority must approve the action by a concurring vote of a majority of the total membership of the authority.*

(e) *A member may not receive compensation for service as a member of the authority. A member is entitled to reimbursement for actual and necessary expenses*

incurred in the performance of the functions of the authority, subject to any limitations on reimbursement provided by the General Appropriations Act.

(f) The delegation of functions under this section is designed to avoid overlapping responsibilities, to provide a means for all involved agencies to participate in the regulation of pesticides, and to clarify various areas of responsibility.

(g) The authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, and the Texas Structural Pest Control Board. Notwithstanding any other provision of this code or of any other law, the authority may:

(1) adopt any rule relating to pesticides, including a rule that amends or repeals an existing rule, except that the authority may not:

(A) adopt, amend, or repeal a rule under Chapter 125 of this code;

(B) repeal a rule that was adopted by an agency for which the authority is the coordinating body and that was in effect on May 1, 1989; or

(C) amend a rule in effect on May 1, 1989, that would make the rule less protective of the public health, safety, or welfare;

(2) review and approve or disapprove any rule relating to pesticides that is proposed by an agency for which the authority is the coordinating body, except a rule under Chapter 125 of this code;

(3) cooperate with and advise the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, the Texas Structural Pest Control Board, and any other state agency that may be concerned with the regulation of pesticides and notify those agencies of any rule the authority intends to adopt;

(4) collect, analyze, and disseminate information necessary for the effective operation of all existing or contemplated programs regulating pesticides;

(5) provide professional advice to private agencies and citizens of this state on matters relating to pesticides in cooperation with other state agencies, with professional groups, and with either state or private educational institutions;

(6) accept gifts, devises, and bequests and, with the approval of the governor, comply with the terms and conditions of any grant to accomplish any of the purposes of the authority;

(7) inform and advise the governor on matters involving pesticides and prepare and recommend to the governor and to the legislature any legislation the authority considers proper for the management and control of pesticides;

(8) make annual reports to the governor and the appropriate legislative oversight committees;

(9) exempt any federal or state agency from any regulatory provision if the authority determines that emergency conditions exist that require the exemption; and

(10) notwithstanding any conflicting or inconsistent provision in this code, hear and determine all appeals from orders entered, by an agency for which the authority is the coordinating body, under this chapter or Chapter 75 or 125 of this code.

(h) An agency for which the authority is the coordinating body may not adopt a rule disapproved by the authority under Subsection (g)(2) of this section.

(i) To ensure due process, the commissioner, because of the commissioner's statutory power over departmental orders, may not participate in the discussions or the determinations to be reached on appeals to the authority under Subsection (g)(10) of this section.

(j) The commissioner shall:

(1) *as necessary, employ personnel as the duties of the authority may require and to the extent of legislative appropriations to the authority;*

(2) *keep an accurate and complete record of all authority meetings and hearings of the authority and maintain legal custody of all books, papers, documents, and other records of the authority;*

(3) *administer this chapter and Chapters 75 and 125 of this code and the rules adopted by the authority; and*

(4) *assign, reassign, or delegate the administrative and enforcement functions assigned to the commissioner by this subsection or by rules or policies established under this subsection to one or more of the divisions or other units within the department or to one or more employees of the department.*

SECTION 83. Section 76.044, Agriculture Code, is amended to read as follows:

Sec. 76.044. FEES. (a) *A nonrefundable [As a condition to registration or renewal of registration, an applicant shall pay to the department a] fee of \$60 for each pesticide to be registered must be submitted with an application for registration or renewal of registration.*

(b) *A [If a] person who fails to apply for renewal of registration on or before the expiration date of the registration must [March 1 of any year, the person, as a condition to renewal, shall] pay, in addition to the renewal fee, the [a] late [registration] fee provided by Section 12.024 of this code [of \$5] for each brand to be renewed[, in addition to the renewal fee].*

SECTION 84. Subsection (b), Section 76.073, Agriculture Code, is amended to read as follows:

(b) *A [If a] person who fails to apply for renewal of a pesticide dealer license on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code [March 1 of any year, the person, as a condition to renewal, shall pay a late license fee of \$5 in addition to the renewal fee].*

SECTION 85. Section 76.076, Agriculture Code, is amended to read as follows:

Sec. 76.076. DENIAL, [OR] REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) *The department may refuse to issue a pesticide dealer license if the applicant fails to comply with this subchapter. [If the department has reason to believe that an applicant has failed to comply with the requirements of this subchapter, or that a licensee has failed to comply with this subchapter or with a rule adopted under this subchapter, the department may conduct a hearing on denial or revocation of the person's license.]*

(b) *The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee if the licensee fails to comply with this subchapter or a rule adopted by the department under this subchapter. [The department shall issue written notice of a hearing under this section to the applicant or licensee. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.]*

(c) *If a license suspension is probated, the department may require the person to:*

(1) *report regularly to the department on matters that are the basis of the probation;*

(2) *limit practice to the areas prescribed by the department; or*

(3) *continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation [After opportunity at the hearing for presentation of evidence by the applicant or licensee, the department may refuse to issue a pesticide dealer license or may revoke a license, as applicable, if the department finds that the applicant or licensee has failed to comply with the applicable requirements of this subchapter or a rule adopted under this subchapter].*

(d) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearing officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 86. Subsections (a) and (b), Section 76.101, Agriculture Code, are amended to read as follows:

(a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, *except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code.* The department shall submit a state plan for the *licensing* ~~[certification]~~ of pesticide applicators to the administrator of the Environmental Protection Agency.

(b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas experiment station. *The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.*

SECTION 87. Section 76.102, Agriculture Code, is amended to read as follows:

Sec. 76.102. AGENCIES RESPONSIBLE FOR *LICENSING* ~~[CERTIFYING]~~ PESTICIDE APPLICATORS. (a) The department shall *license* ~~[certify]~~ pesticide applicators involved in the following license use categories:

- (1) agricultural pest control, including animal pest control;
- (2) forest pest control;
- (3) ornamental and turf pest control, except as provided by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes);
- (4) seed treatments;
- (5) right-of-way pest control;
- (6) regulatory pest control;
- (7) aquatic pest control; and
- (8) demonstration pest control.

(b) The Texas Department of Health shall *license* ~~[certify]~~ pesticide applicators involved in the license use category of health-related pest control.

SECTION 88. Subsections (a), (b), and (c), Section 76.103, Agriculture Code, are amended to read as follows:

(a) The licensing of ~~[certified]~~ commercial *applicators*, ~~[and]~~ noncommercial applicators, *and private applicators* is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.

(b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of ~~[certified]~~ commercial *applicators*, ~~[and]~~ noncommercial applicators, *and private applicators*. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of ~~[certified]~~ commercial *applicators*, ~~[and]~~ noncommercial applicators, *and private applicators*. The department shall publish notice of resumption of the program in the Texas Register.

SECTION 89. Section 76.105, Agriculture Code, is amended to read as follows:

Sec. 76.105. LICENSE REQUIRED. (a) ~~A [Except as otherwise provided by this section, a] person may not use [or supervise the use of] a restricted-use or state-limited-use pesticide unless the person is:~~

(1) licensed as a ~~[certified]~~ commercial *applicator*, ~~[or]~~ noncommercial applicator, or private applicator~~;~~ and

~~[(2)]~~ authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use~~;~~]

~~(2) [(b) Subsection (a) of this section does not apply to]~~ an individual acting under the direct supervision of a licensed ~~[certified]~~ applicator; or~~[-]~~

~~(3) a certified private applicator as defined in Section 76.112(j) of this code.~~

~~(b) An [(a) For purposes of this section, an]~~ individual is under the direct supervision of a licensed noncommercial or a licensed private ~~[certified]~~ applicator if the individual is acting under the instructions and control of a licensed noncommercial or a licensed private ~~[certified]~~ applicator who is responsible for the actions of the individual and who is available if and when needed. The licensed noncommercial or licensed private ~~[certified]~~ applicator is not required to be physically present at the time and place of the pesticide application.

~~(c) An individual is under the direct supervision of a licensed commercial applicator if the individual is acting under the instructions and control of a licensed commercial applicator who is responsible for the actions of the individual and who is continuously physically present at the time and place of the pesticide application.~~

~~(d) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticides being used by the individual. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision attends a program conducted by the department that is designed to make the person knowledgeable of the label requirements and rules and regulations governing the use of pesticides.~~

~~(e) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides.~~

~~(f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:~~

~~(1) approval to authorize use of certain restricted-use or state-limited-use pesticides;~~

~~(2) federal funding for licensing or certification of pesticide applicators;~~

~~(3) federal funding for pesticide law enforcement efforts; or~~

~~(4) other federal funding related to pesticide risk reduction.~~

~~(g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.~~

SECTION 90. Section 76.106, Agriculture Code, is amended to read as follows:

Sec. 76.106. CLASSIFICATION OF ~~[COMMERCIAL AND NONCOMMERCIAL]~~ LICENSES. (a) The head of each regulatory agency may classify commercial *applicator* and noncommercial *applicator* licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.

(b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.

(c) Each regulatory agency may charge a nonrefundable testing fee of not more than \$20 for testing in each license use category.

SECTION 91. Section 76.107, Agriculture Code, is amended to read as follows:

Sec. 76.107. *LICENSING [CERTIFICATION] BY MORE THAN ONE AGENCY.* (a) A person who wants to be *licensed [certified]* as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting *licensing [certification]* requirements for each category for which the person desires *licensing [certification]*.

(b) A person *licensed [certified]* under this section must pay testing fees required by each regulatory agency.

SECTION 92. Subsections (a), (b), (d), (e), and (f), Section 76.108, Agriculture Code, are amended to read as follows:

(a) A person who operates a business *or is an employee of a business* that applies state-limited-use or restricted-use pesticides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by a *nonrefundable [an]* annual license fee of no more than \$150, as fixed by the head of the agency.

(d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a license issued under this subchapter revoked within the last two years;

(3) the applicant, or the applicant's representative if the applicant is a business, has been unable to satisfactorily fulfill *licensing [certification]* requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.

(e) An individual to whom a commercial applicator license is issued is *[a-certified applicator]* authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(f) If a license is issued in the name of a business, the business must have a *licensed [certified]* applicator employed at all times. Failure to have a *licensed [certified]* applicator employed is a ground for revocation of a business commercial applicator license.

SECTION 93. Subsections (b), (d), and (e), Section 76.109, Agriculture Code, are amended to read as follows:

(b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. A nongovernmental applicant shall include with the application a *nonrefundable [an]* annual license fee of not more than \$100, as fixed by the head of the regulatory agency. A regulatory agency may not charge a governmental entity applicant a license fee.

(d) An individual to whom a noncommercial applicator license is issued is *[a-certified applicator]* authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(e) If a license is issued in the name of a governmental entity, the entity must have a *licensed [certified]* applicator employed at all times. Failure to have a *licensed [certified]* applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

SECTION 94. Section 76.110, Agriculture Code, is amended to read as follows:

Sec. 76.110. *COMMERCIAL AND NONCOMMERCIAL [CERTIFIED] APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS.* (a) Each person applying for a license as a *commercial [certified] applicator or a noncommercial applicator* must pass an examination demonstrating that the person:

(1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) has knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the person is to be licensed.

(b) *Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day.*

(c) *If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.*

(d) The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same examination standards.

SECTION 95. Section 76.111, Agriculture Code, is amended to read as follows:

Sec. 76.111. *COMMERCIAL APPLICATOR PROOF OF FINANCIAL RESPONSIBILITY.* (a) Except as otherwise provided by this section, each applicant for a commercial applicator license shall file with the regulatory agency issuing the license:

(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or

(2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.

(b) If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.

(c) If the State Board of Insurance determines after giving notice to the regulatory agency that the liability insurance policy required by Subsection (a)(2) of this section is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a) of this section, an applicant for a commercial *applicator* license may:

(1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amount prescribed by Subsection (f) of this section, made payable to the regulatory agency and issued for the purpose of protecting persons who may suffer damages as a result of the operations of the applicant;

(2) file property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the State Board of Insurance; or

(3) comply with other proof of financial responsibility requirements adopted by rule of the regulatory agency under this subchapter.

(d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(e) The proof of financial responsibility required by this section must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.

(f) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than ~~[\$5,000 nor more than]~~ \$100,000 for property damage and may not be less than ~~\$100,000 [\$5,000]~~ for bodily injury. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. At all times during the license period, the coverage must be maintained at not less than the amount set by the agency head or the State Board of Insurance, as applicable.

(g) At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.

(h) The head of a regulatory agency may accept a bond or liability insurance policy in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the applicant's operation.

(i) ~~(h)~~ The department shall exempt a commercial applicator from the requirements of showing proof of financial responsibility under this section if the applicator agrees:

(1) to a license for use of ground application equipment only; and

(2) to a license that limits the application to only those herbicides determined by the department not to create a substantial risk of drift because of volatility.

(j) ~~(i)~~ Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond, liability insurance policy, or any other proof of financial responsibility as authorized by rule of the regulatory agency. A licensee may not operate as a commercial applicator during an uncovered period. Failure to file a bond, liability insurance policy, or other proof of authorized financial responsibility or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license.

(k) ~~(j)~~ The regulatory agency by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The regulatory agency may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the commercial applicator or pursuant to court order.

SECTION 96. Section 76.112, Agriculture Code, is amended to read as follows:

Sec. 76.112. PRIVATE APPLICATOR. (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide for the purpose of producing an agricultural commodity:

(1) on property owned or rented by the person or the person's employer or under the person's general control; or

(2) on the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(b) A private applicator is ~~not~~ required to be *either* licensed or certified to use restricted-use or state-limited-use pesticides.

(c) ~~The department may establish a voluntary program to certify private applicators who wish to apply restricted-use pesticides in compliance with federal law.~~

~~[(d)]~~ An employee qualifies as a private applicator under Subdivision (1) of Subsection (a) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.

(d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a private applicator license.

(e) A person shall apply for an original or renewal private applicator license on forms prescribed by the regulatory agency. The application shall include information as required by agency rule and must be accompanied by a nonrefundable fee of \$50.

(f) The head of a regulatory agency may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides.

(g) The head of a regulatory agency may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.

(h) An individual to whom a private applicator license is issued is authorized to use and supervise the use of restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

(i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

SECTION 97. Section 76.113, Agriculture Code, is amended to read as follows:

Sec. 76.113. EXPIRATION AND RENEWAL OF LICENSES. (a) Each commercial applicator or noncommercial applicator license expires on the last day of February of the year following the year in which it was issued.

(b) Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued.

(c) Except as provided by Subsection (d) [(e)] of this section, a person having a valid [current commercial or noncommercial applicator] license issued under this subchapter may renew the license for another term [year] without retesting by paying to the regulatory agency the [annual] license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.

(d) [(e)] A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required [in the license use categories or subcategories in which the licensee applies] for renewal.

SECTION 98. Subsections (a) and (b), Section 76.114, Agriculture Code, are amended to read as follows:

(a) A regulatory agency shall require each commercial applicator and noncommercial applicator licensee to maintain records of the licensee's use of pesticides. The regulatory agency by rule shall prescribe the information to be included in the records.

(b) A regulatory agency may require a *commercial applicator and noncommercial applicator* licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide and may require those records to be kept separate from other business records.

SECTION 99. Section 76.116, Agriculture Code, is amended to read as follows:

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. (a) The head of a regulatory agency that licensed *or certified an* ~~[a-certified]~~ applicator may suspend, modify, or revoke any provision in the license *or certificate*, ~~assess an administrative penalty, place on probation a person whose license or certificate has been suspended, or reprimand a licensee or certificate holder~~ *if the head of the agency finds that the licensee or certificate holder has:*

(1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;

(2) operated in a faulty, careless, or negligent manner;

(3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;

(4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required *by this chapter*;

(5) failed to maintain a bond or policy of insurance as required by this chapter;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for a license or renewal of a license; or

(8) aided or abetted a *certified*, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a *certified*, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license *or the certificate holder's certificate* to be used by another person.

(b) A regulatory agency may temporarily suspend a license *or certificate* under this section for not more than 10 days after giving the licensee *or certificate holder* written notice of noncompliance.

(c) *If a license or certificate suspension is probated, the regulatory agency may require the person to:*

(1) *report regularly to the agency on matters that are the basis of the probation;*

(2) *limit practice to the areas prescribed by the agency; or*

(3) *continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.*

(d) *Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency proposes to suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearing officer designated by the agency. The agency shall prescribe procedures by which all decisions to suspend, modify, or revoke are appealable to the governing officer or board of the agency. [In order to suspend a license for more than 10 days or to modify or revoke a license, the regulatory agency shall conduct a hearing on the action. The hearing must be held before the 11th day following the day on which the agency issues written notice to the licensee of the time, place, and nature of the hearing.]*

SECTION 100. Subsection (a), Section 76.131, Agriculture Code, is amended to read as follows:

(a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:

(1) preventing injury from storage or disposal to man, vegetation, crops, or animals;
and

(2) preventing any waterway pollution that is harmful to man or wildlife *provided, however, that such rules be consistent with Texas Water Commission rules adopted under Chapter 26 of the Water Code.*

SECTION 101. Chapter 76, Agriculture Code, is amended by adding Section 76.1555 to read as follows:

Sec. 76.1555. ADMINISTRATIVE PENALTY. (a) If a person violates a provision of Chapter 75 or 76 of this code administered by the department or a rule or order adopted by the department under either of those chapters, the department may assess an administrative penalty against the person as provided by this section.

(b) The penalty may be in an amount not to exceed \$2,000 for each violation, provided that the penalty shall not exceed \$4,000 for all violations related to a single incident. The department shall establish a schedule stating the types of violations possible under Chapters 75 and 76 of this code and the maximum fine applicable to each type of violation. The department is not required to comply with Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based and may recommend that an administrative penalty under this section be imposed on the person charged and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty, if any is recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may accept the determination of the department made under Subsection (d) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warrant-

ed. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The department shall give notice of the commissioner's order to the person charged. The notice shall include:

- (1) the findings of fact and conclusions of law separately stated;*
- (2) the amount of the penalty ordered, if any;*
- (3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and*
- (4) other information required by law.*

(j) Within the 30-day period immediately following the day on which the order becomes final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty, post a supersedeas bond in a form approved by the department for the amount of the penalty or \$1,000, whichever is less, the bond to be effective until all judicial review of the order or decision is final.

(k) A bond under Subsection (j)(2) of this section must be posted with the district clerk. The bond must be filed at the same time the petition for judicial review is filed.

(l) If a person charged is financially unable to post a supersedeas bond, the person may satisfy the requirements of Subsection (j)(2) of this section by filing with the district clerk an affidavit sworn by the person charged stating that the person is financially unable to post a bond.

(m) Failure to post the bond or file the affidavit within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (j)(1) of this section or post the bond or file the affidavit as provided by Subsection (j) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) On final judgment of the court and payment of any penalties and costs assessed by the court, the department shall execute a release of any supersedeas bond posted under this section.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

(q) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

SECTION 102. Section 76.156, Agriculture Code, is amended to read as follows:

Sec. 76.156. CIVIL PENALTY. (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000 for each day on which the violation occurs.

(b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil

penalty of not less than \$50 nor more than \$10,000 for each violation, provided that the penalty shall not exceed \$25,000 for all violations related to a single incident.

(c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.

(d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.

(e) [(e)] The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

(f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

SECTION 103. Section 76.182, Agriculture Code, is amended to read as follows:

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. (a) A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, ~~or~~ noncommercial applicator license, *or private applicator license* has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, ~~or~~ noncommercial applicator license, *private applicator license, or private applicator certificate* has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is governed by the substantial evidence rule.

SECTION 104. Subsection (b), Section 76.201, Agriculture Code, is amended to read as follows:

(b) A person commits an offense if the person:

(1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter;

(2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;

(3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;

(4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or

(5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to:

[(A)] cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects; ~~or~~

[(B)] pollute a water supply or waterway].

SECTION 105. Subsection (e), Section 76.201, Agriculture Code, is amended to read as follows:

(e) A person commits an offense if the person knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes *injury to man, vegetation, crops, livestock, wildlife, or pollinating insects* ~~[bodily injury to a human being or pollution of a water supply. For purposes of this subsection, "pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of water in the state that renders the water harmful, detrimental, or injurious to humans or to public health, safety, or welfare].~~

SECTION 106. Subsection (c), Section 78.045, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person fails to obey a rule prescribed under Subsection (a) of this section. An offense under this subsection is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$250]~~.

SECTION 107. Subsection (b), Section 91.008, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine of not more than \$100]~~.

SECTION 108. Section 92.042, Agriculture Code, is amended to read as follows:

Sec. 92.042. PENALTY. An offense under Section 92.041 of this subchapter is a *Class C* misdemeanor ~~[punishable by a fine of not more than \$200]~~.

SECTION 109. Section 93.062, Agriculture Code, is amended to read as follows:

Sec. 93.062. PENALTY. An offense under Section 93.061 of this code is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not more than \$500;~~

~~[(2) confinement in county jail for not more than 90 days; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 110. Section 94.052, Agriculture Code, is amended to read as follows:

Sec. 94.052. PENALTY. An offense under Section 94.051 of this code is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$500;~~

~~[(2) confinement for not more than six months; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 111. Section 95.042, Agriculture Code, is amended to read as follows:

Sec. 95.042. PENALTY. An offense under Section 95.041 of this code is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$25 nor more than \$500;~~

~~[(2) confinement for not more than six months; or~~

~~[(3) both fine and confinement under this section].~~

SECTION 112. Section 101.012, Agriculture Code, is amended to read as follows:

Sec. 101.012. *REVOCATION, MODIFICATION, OR SUSPENSION [CANCELLATION] OF LICENSE OR IDENTIFICATION CARD.* (a) *The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this chapter or a rule adopted by the department under this chapter [On complaint of any person aggrieved, injured, or damaged as a result of a violation of this chapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party].*

(b) *If a suspension of a license or identification card is probated, the department may require the person to:*

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation [If, following the hearing, the department finds that the evidence warrants cancellation

~~of the license or identification card, the department shall issue an order canceling the license or card].~~

~~(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearing officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires].~~

SECTION 113. Chapter 101, Agriculture Code, is amended by adding Section 101.0185 to read as follows:

Sec. 101.0185. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 114. Section 101.019, Agriculture Code, is amended to read as follows:

Sec. 101.019. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this chapter is in the county in which the violation occurred, is occurring, or is threatened or in which the vegetables were received by the licensee, packer, or warehouseman.

SECTION 115. Section 102.012, Agriculture Code, is amended to read as follows:

Sec. 102.012. REVOCATION, MODIFICATION, OR SUSPENSION [CANCELLATION] OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter [On complaint of any person aggrieved, injured, or damaged as a result of a violation of this subchapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party].

(b) If a suspension of a license or identification card is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation~~[following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card].~~

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) ~~[The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires].~~

SECTION 116. Chapter 102, Agriculture Code, is amended by adding Section 102.0195 to read as follows:

Sec. 102.0195. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 117. Section 102.020, Agriculture Code, is amended to read as follows:

Sec. 102.020. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this subchapter is in the county in which the violation occurred, is occurring, or is threatened or in which the citrus fruit was received by the licensee, packer, or warehouseman.

SECTION 118. Subsection (b), Section 102.104, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$100 nor more than \$500;~~

~~[(2) confinement in jail for not less than 30 days nor more than 6 months; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 119. Chapter 102, Agriculture Code, is amended by adding Section 102.1045 to read as follows:

Sec. 102.1045. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) *On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.*

(c) *A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.*

(d) *The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.*

SECTION 120. Subsection (b), Section 102.171, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class B* misdemeanor ~~[punishable by:~~

~~[(1) a fine of not less than \$50 nor more than \$500;~~

~~[(2) confinement for not less than 10 days nor more than 6 months; or~~

~~[(3) both fine and confinement under this subsection].~~

SECTION 121. Chapter 103, Agriculture Code, is amended by adding Section 103.0055 to read as follows:

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a commission merchant or retailer is not affected by a final judgment of a bankruptcy court that releases the commission merchant or retailer from the legal duty to satisfy the claim.

SECTION 122. Section 103.009, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) *This section does not apply to a commission merchant or retailer who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.*

SECTION 123. Chapter 103, Agriculture Code, is amended by adding Section 103.015 to read as follows:

Sec. 103.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) *On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.*

(c) *A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.*

(d) *The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.*

SECTION 124. Subsection (c), Section 111.007, Agriculture Code, is amended to read as follows:

(c) An offense under ~~[Subsection (a) of]~~ this section is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$200. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than \$25].~~

SECTION 125. Subsection (b), Section 112.009, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$25 nor more than \$200].~~

SECTION 126. Subsection (b), Section 121.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor ~~[punishable by a fine of not less than \$50 nor more than \$100].~~

SECTION 127. Subsection (b), Section 132.025, Agriculture Code, is amended to read as follows:

(b) An applicant for the renewal of a license *must* ~~[shall]~~ pay the license fee during the last month of the ~~[August preceding the next]~~ license year. *A person who fails to apply for a renewal license on or before the expiration date must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.*

SECTION 128. Chapter 132, Agriculture Code, is amended by adding Section 132.0715 to read as follows:

Sec. 132.0715. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty in a legal action on behalf of the state.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 129. Section 132.072, Agriculture Code, is amended to read as follows:

Sec. 132.072. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE.

(a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). [If a person is convicted of an offense under this chapter, the department may suspend that person's license for a period not to exceed 90 days.]

SECTION 130. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.09. APPLICATION. The state agencies subject to this article are:

- (1) the Texas Department of Mental Health and Mental Retardation;
- (2) the Texas Department of Human Services; [and]
- (3) the Texas Department of Corrections; and
- (4) the Department of Agriculture.

SECTION 131. The following subsections of the Agriculture Code are repealed:

- (1) Section 71.045;
- (2) Subsection (d), Section 75.005;
- (3) Subsection (d), Section 101.018;
- (4) Subsection (e), Section 101.018;
- (5) Subsection (d), Section 102.019; and
- (6) Subsection (e), Section 102.019.

SECTION 132. The first policy statement required to be filed under Subsection (e), Section 12.013, Agriculture Code, as amended by this Act, must be filed before November 1, 1989.

SECTION 133. The Department of Agriculture shall file the initial policies established under Section 12.029, Agriculture Code, as added by this Act, with the State Purchasing and General Services Commission and the Texas Department of Commerce not later than September 1, 1990.

SECTION 134. Notwithstanding the requirements of Section 12.0145, Agriculture Code, as added by this Act, the Department of Agriculture, for the fiscal bienniums ending August 31, 1993, and August 31, 1995, shall submit proposed fee schedules that would recover 50 percent of all direct costs of administering each nonexempt program.

SECTION 135. Notwithstanding Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act, and Section 12.027, Agriculture Code, as added by this Act, the competitive cost review provisions, until September 1, 1991, are applicable only to the warehousing and mail handling functions of the Department of Agriculture.

SECTION 136. Notwithstanding Section 76.112, Agriculture Code, as amended by this Act, the Department of Agriculture may suspend for the initial license term the initial training requirement of all private applicator license applicants who have a current private applicator certificate obtained under the department's voluntary program. Those applicants shall attend an initial training program before receiving a renewal license.

SECTION 137. Notwithstanding Section 76.113, Agriculture Code, as amended by this Act, the Department of Agriculture may adopt a system that will stagger the private applicator license renewals over a five-year period. If such a system is adopted, the license fee shall be prorated so that each licensee shall pay only that portion of the license fee that is allocable to the number of years during which the license is valid.

SECTION 138. Notwithstanding Section 76.105, Agriculture Code, as amended by this Act, a private applicator is not required to be licensed to use or supervise the use of a restricted-use or state-limited-use pesticide before January 1, 1990, unless this provision conflicts with a federal law, rule, or court order.

SECTION 139. (a) This Act applies only to an offense or other violation committed on or after the effective date of this Act. For purposes of this section, an offense or other

violation is committed before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense or violation committed before the effective date of this Act is covered by the law in effect when the offense or violation was committed, and the former law is continued in effect for this purpose.

SECTION 140. Section 103.0055, Agriculture Code, as added by this Act, applies only to claims filed with the Department of Agriculture on or after the effective date of this Act.

SECTION 141. The change in the law made by Section 2 of this Act applies only to elections held or appointments made on or after the effective date of this Act.

SECTION 142. The sum of \$100,000 is appropriated, for each year of the fiscal biennium ending August 31, 1991, from the General Revenue Fund to the Agriculture Resources Protection Authority for the purpose of performing authority powers and duties under Section 76.009, Agriculture Code, as added by this Act.

SECTION 143. This Act takes effect September 1, 1989.

SECTION 144. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 20, 1989, by a viva-voce vote; May 15, 1989, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 16, 1989, House granted request of the Senate; May 25, 1989, Senate adopted Conference Committee Report by a viva-voce vote. Passed the House, with amendments, on May 11, 1989, by a non-record vote; May 16, 1989, House granted request of the Senate for appointment of Conference Committee; May 26, 1989, House adopted Conference Committee Report by a non-record vote.

Approved June 2, 1989.

Effective Sept. 1, 1989.

CHAPTER 231

S.B. No. 1481

AN ACT

relating to the impact of recent court interpretations of the First and Fourteenth Amendments to the United States Constitution on certain state taxes, the rulemaking authority of the comptroller concerning those taxes, and penalties imposed on delinquent state taxes and tax reports; concerning exemptions from limited sales, excise, and use tax.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 101.002, Tax Code, is amended to read as follows:

Sec. 101.002. CONSTRUCTION OF CODE. (a) The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision of this title, except as specifically provided by this title.

(b) *Except as otherwise provided by statute, the jurisdiction and authority of the state to determine the subjects and objects of taxation shall extend to the limits of the then-current interpretations of the Texas Constitution and United States Constitution and laws.*

SECTION 2. Subsection (a), Section 111.002, Tax Code, is amended to read as follows:

(a) The comptroller may adopt rules that do not conflict with the laws of this state or the constitution of this state or the United States for the enforcement of the provisions of this title and the collection of taxes and other revenues under this title. *In addition to the discretion to adopt, repeal, or amend such rules permitted under the constitution*